

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

<p>UNITED STATES OF AMERICA,</p> <p>Plaintiff,</p> <p>vs.</p> <p>ARTURO CRUZ-RODRIGUEZ, aka ARTURO CISNEROS-CASARES,</p> <p>Defendant,</p>	<p>MEMORANDUM DECISION AND ORDER ON DEFENDANT'S OBJECTION TO GOVERNMENT'S PROPOSED JURY INSTRUCTION NO. 5</p> <p>Case No. 2:06-CR-504 TS</p>
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Defendant objects to the following line from the government's proposed jury instruction No. 5 regarding the element of a previous deportation: "If you find that the defendant was deported from the United States at any time prior to July 10, 2006, the element is met." Defendant contends that the "effect of this instruction is to sever the date of deportation, May 31, 2002, alleged in the Indictment from the jury's consideration."


The government contends that because the charge in this case, violation of 8 U.S.C. § 1326, does not require the government to allege any specific date of deportation, the date of the deportation is not an element of the offense.

The Court agrees that the date of the deportation is not an element of the offense.<sup>1</sup> The Court finds that the jury instruction at issue in *Cruz* is identical to the one to which Defendant objects in the present case. Although *Cruz* is an unpublished decision, the Court finds that it has persuasive value with respect to a material issues raised by Defendant's Objection that has not been addressed in a published opinion directly on point.<sup>2</sup> Applying the reasoning of *Cruz*, Defendant's Objection is overruled. The instruction will be used as the Court's Instruction No. 19.

SO ORDERED .

DATED January 5, 2007.

BY THE COURT:

  
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TED STEWART  
United States District Judge

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<sup>1</sup>*United States v. Cruz*, 189 Fed. Appx. 725, 2006 WL 1997693 \* 2 (10th Cir. 2006).

<sup>2</sup>See Former 10th Cir. R. 36.3.